THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BOARD OF FORENSIC DOCUMENT EXAMINERS, INC. (BFDE), and the following individuals who are certified by the BFDE: M. PATRICIA FISHER, LYNDA HARTWICK, ANDREW SULNER, J. MICHAEL WELDON, EMILY J. WILL, VICKIE L. WILLARD, and ROBIN D. WILLIAMS,

Plaintiffs,

-against-

AMERICAN BAR ASSOCIATION, THOMAS VASTRICK, STEPHANIE DOMITROVICH, AND THE AMERICAN BOARD OF FORENSIC DOCUMENT EXAMINERS

Defendants.

Civil Action No. 1:17-cv-01130

AMENDED COMPLAINT FOR DEFAMATION, FALSE AND MISLEADING ADVERTISING UNDER LANHAM ACT § 43(a), 15 U.S.C. § 1125(a), INVASION OF PRIVACY, DECEPTIVE ADVERTISING UNDER STATE CONSUMER PROTECTION ACTS AND CIVIL CONSPIRACY

JURY DEMAND

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AMENDED COMPLAINT

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Plaintiffs Board of Forensic Document Examiners, Inc. ("BFDE"), M. Patricia Fisher ("Fisher"), Lynda Hartwick ("Hartwick"), Andrew Sulner ("Sulner"), J. Michael Weldon ("Weldon"), Emily J. Will ("Will"), Vickie L. Willard ("Willard"), and Robin D. Williams ("Williams"), by and through their attorneys, Ariel Weissberg, Devvrat Sinha and Andrew Sulner, by way of Complaint, say and allege as follows:

I. INTRODUCTION

This action involves claims by the Board of Forensic Document Examiners, Inc. ("BFDE) as plaintiff, and in its capacity as the certifying body for each of the individually named plaintiffs who are BFDE-certified forensic document examiners (Fisher, Hartwick, Sulner, Weldon, Will, Willard, and Williams), and by Andrew Sulner, through separate causes of action individually, against Defendants American Bar Association, Inc., The Judges' Journal, Thomas Vastrick, Stephanie Domitrovich and the American Board of Forensic Document Examiners, Inc. ("ABFDE") (hereinafter collectively referred to as the "Defendants") for defamation (libel) *per se*, invasion of privacy by placing the individual plaintiffs in a false light, and for false and deceptive advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), and in violation of Consumer Protections Acts of the Plaintiffs' several states, Cal. Bus. & Prof. Code § 17200 *et seq*; Cal Bus. & Prof. Code § 17500 *et seq*; North Carolina Gen. Stat. § 75-1.1; Ohio Rev. Code § 4165.02; 815 ILCS 505/2, § 2; 815 IILCS 510/2; N.Y. Gen. Bus. § 349, arising from the publication and republication of false and misleading statements contained in an article written by Thomas Vastrick (hereinafter the "Vastrick Article") that appeared in the Summer Edition (Vol. 54 No.3) of *The Judges' Journal*, a peer-reviewed quarterly publication of the Judicial Division of the American Bar Association, which was edited by Defendant Stephanie Domitrovich. Plaintiffs seek damages and injunctive relief, as well as a determination that the conduct of the Defendants constitutes deliberate, willful and/or bad faith conduct such that this case should be declared an exceptional case under 15 U.S.C. § 1117(a).

II. PARTIES

A. Plaintiffs

Board of Forensic Document Examiners, Inc. ("BFDE")

1. Plaintiff Board of Forensic Document Examiners, Inc. ("BFDE") is a non-profit Texas corporation whose corporate agent registered with the Texas Secretary of State is Susan E. Abbey, located at 9126 Raeford Drive, Dallas, TX 75243.

2. The BFDE is a forensic specialty certification board that certifies experts in forensic

document examination. In 2006, the BFDE became the first certifying board for forensic document examiners ("FDEs") to be accredited by the Forensic Specialties Accreditation Board ("FSAB").

3. There are currently twelve (12) FDEs who are certified by the BFDE ("BFDE Diplomates").

M. Patricia Fisher ("Fisher")

4. Plaintiff M. Patricia Fisher ("Fisher") is a resident of the State of California and a forensic document examiner who is board certified by the BFDE and maintains a principal place of business at 1990 N. California Blvd., 8th Floor, Walnut Creek, CA 94596.

Lynda Hartwick ("Hartwick")

5. Plaintiff Lynda Hartwick ("Hartwick") is a resident of the State of Missouri and a forensic document examiner who is board certified by the BFDE and maintains a principal place of business at 34 Bluff Ridge Drive, Suite 1c, Lake Ozark, MO 65049.

Andrew Sulner ("Sulner")

6. Plaintiff Andrew Sulner ("Sulner") is a resident of the State of New York and a forensic document examiner who is board certified by the BFDE and maintains a principal place of business at 220 East 57th Street, New York, NY 10022.

J. Michael Weldon ("Weldon")

7. Plaintiff J. Michael Weldon ("Weldon") is a resident of the State of Texas and a forensic document examiner who is board certified by the BFDE and maintains a principal place of business at 21 Highview Circle, Denton, TX 76205.

Emily J. Will ("Will")

8. Plaintiff Emily J. Will ("Will") is a resident of the State of North Carolina and a

forensic document examiner who is board certified by the BFDE and maintains a principal place of business at 13317 Garffe Sherron Rd., Wake Forest, NC 27587.

Vickie L. Willard ("Willard")

9. Plaintiff Vickie L. Willard ("Willard") is a resident of the State of Ohio and a forensic document examiner who is board certified by the BFDE and maintains a principal place of business at 9516 Brookside Rd., Independence, OH 44131.

Robin Williams ("Williams")

10. Plaintiff Robin Williams ("Williams") is a forensic document examiner who is board certified by the BFDE and who maintains his principal office at 161 N. Clark St., Suite 1600, Chicago, IL 60601 and is domiciled in the State of Wisconsin.

B. Defendants

American Bar Association ("ABA")

11. Defendant American Bar Association, Inc. ("ABA") is a non-profit Illinois corporation whose principal place of business is located at 750 N. Lake Shore Drive, Chicago, Illinois 60611.

12. The ABA is the highly-respected national association of the American legal profession, with over 410,000 members throughout the United States, including many in each of the States in which the Plaintiffs reside and in which the Plaintiffs have existing and prospective clients.

13. Membership in the ABA is open to all attorneys, judges and law students, as well as non-lawyers interested in the law, such as paralegals, law librarians, economists, court administrators, legal academicians, and others.

14. The ABA publishes and/or owns a scholarly and widely-read quarterly journal

known as the *The Judges' Journal*, which it distributes locally, nationally and internationally, in regular print (hard copy) and electronic (online) formats, to its members, courts, libraries and other subscribers. Electronic versions of *The Judges' Journal* are available to its subscribers, and individual articles are available selectively online. The Vastrick Article in particular is readily available to Members of the following ABA groups: ABA Licensing Partners, ABA Lawyers Conference, ABA Appellate Judges Conference, ABA National Conference of the Administrative Law Judiciary, ABA National Conference of State Trial Judges, ABA National Conference of Federal Trial Judges, and ABA National Conference of Specialized Court Judges.

15. The Judges' Journal is a periodical published and/or owned by defendant ABA and is located at 750 N. Lake Shore Drive, Chicago, Illinois 60611, and sent to, *inter alia*, the large number of state and federal judges who are members of the ABA Judicial Division.

Thomas Vastrick ("Vastrick")

16. Defendant Thomas Vastrick ("Vastrick") is a forensic document examiner who maintains two principal places of business, located at 522 S Hunt Club Blvd, Suite 217, Apopka, Florida 32703 and at 6025 Stage Road, Suite 42-309, Memphis, Tennessee 38134.

17. Vastrick is board certified by the American Board of Forensic Document Examiners ("ABFDE"), which is a competitor of the BFDE. He is a current Board member and past President of the ABFDE. He is also a member of the American Academy of Forensic Sciences ("AAFS") and past Chair of its Questioned Document Section ("QDS").

18. Defendant Vastrick is the author of an article, *Forensic Handwriting Comparison Examination in the Courtroom* (hereinafter the "Vastrick Article"), that appeared on pages 30-34 of the Summer Edition (Vol. 54 No.3) of *The Judges' Journal*, a peer-reviewed quarterly publication of the Judicial Division of the American Bar Association, which was edited by

Defendant Stephanie Domitrovich, among other members of the editorial staff at the ABA.

Stephanie Domitrovich ("Domitrovich")

19. Defendant Stephanie Domitrovich ("Domitrovich") is a resident of the State of Pennsylvania and an Erie County Common Pleas Court Judge.

20. At all times relevant herein, Domitrovich served on the Editorial Board of The Judges' Journal and was the Special Editions Editor of the Summer 2015 edition of *The Judges' Journal* (Vol. 54 No. 3) published by defendant ABA.

21. At all times relevant herein, Domitrovich was a Director of the Forensic Specialties Accreditation Board, Inc. ("FSAB"), which has accredited the BFDE and the ABFDE as certifying boards for FDEs.

22. Domitrovich was one of three members of the Annual Review Committee ("ARC") responsible for reviewing the 2015 reaccreditation application of the BFDE, which in turn submitted a written recommendation to the FSAB board advising that BFDE's application for reaccreditation be denied.

American Board of Forensic Document Examiners, Inc. ("ABFDE")

23. Defendant ABFDE is a nonprofit organization incorporated in the District of Columbia that maintains an administrative office of record located at 7887 San Felipe, Suite 122, Houston, Texas 77063.

24. The ABFDE is forensic specialty certification board that certifies experts in forensic document examination and is a competitor of the BFDE. In 2007, the ABFDE became the second certification board for FDEs to be accredited by FSAB, the only other one being the BFDE, which was accredited by FSAB a year earlier, in 2006.

25. There are approximately 150 active ABFDE-certified FDEs ("ABFDE Diplomates").

III. JURISDICTION AND VENUE

26. This Court has jurisdiction over this matter pursuant to Section 1331 of Title 28 because it presents a Federal Question under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

27. The Court has jurisdiction over this matter pursuant to Section 1332 of Title 28 because there is diversity of citizenship among the parties, and the amount in controversy satisfies or exceeds the statutory requirement.

28. This Court has supplemental jurisdiction over the state-law claims also asserted in this action pursuant to Section 1367(a) of title 28.

29. Venue lies in this District pursuant to Section 1391(b) of Title 28. Defendants' respective business relationships and conduct either in this District or directed to others within this District give rise to the claims asserted in this Complaint, and the Defendants are subject to personal jurisdiction in this District.

IV. BACKGROUND INFORMATION

A. Forensic Document Examination in General

30. Forensic Document Examination is a forensic specialty dedicated to the analysis and comparison of handwriting, hand printing, signatures, printing processes, typewriters, ink, paper, and all forms of documentary evidence in order to: establish authorship or authenticity; establish manner or relative date of preparation; reveal alterations, additions, deletions, or substitutions; identify or eliminate persons as the source of handwriting; identify or eliminate the source of machine produced documents, typewriting, or other impression marks, or relative evidence; and preserve and/or restore legibility.

31. A forensic document examiner ("FDE") writes technical reports and provides expert testimony in criminal and civil cases.

32. The field of forensic document examination consists of individuals who work in the public sector as salaried employees of a federal, state or municipal law enforcement agency, and individuals who work in the private sector, usually as sole owners or partners in a private practice or business.

33. Whether working in the government sector or the private sector, FDEs perform essentially the same type of work, and train to do their work in large part as apprentices to an experienced document examiner. The time frame for training individuals in this discipline, however, can and often does differ between the two sectors, as more particularly described below.

B. The Relevant Market for Private Sector Forensic Document Examination Services

34. The geographic marketplace for private sector forensic document examination services is the United States, although the majority of the income earned by many private practice FDEs is derived from customers domiciled within their state of residence and the surrounding states.

35. The customers who seek and/or retain the services of FDEs are: lawyers in private practice; private sector business entities such as corporations, banks, insurance companies and brokerage firms; federal and state public defenders' offices and prosecutors' offices; federal, state and municipal governmental or regulatory agencies; and members of the public at large.

36. Regardless of who the customer is, the decision of whether or not to hire a particular FDE is greatly influenced by how the bench and bar perceive the credentials and qualifications of a given FDE.

C. Training of Forensic Document Examiners (FDEs) in the United States

37. Traditionally, training in the discipline of forensic document examination has been achieved through on-the-job mentoring/apprenticeship either in a government crime lab or in the private sector. Although the content of the educational component of training has become more formalized during the past 15-20 years, tutelage has been and still remains an essential component of training in this discipline. Whereas the core subjects of training have become more formalized, there is still no standardized method of training in either crime laboratories or the private sector.

38. Trainees in the public sector receive their training on-the-job while working full-time for a government agency. They spend time in self-directed study (assignments given by the trainer) and time with the trainer working on cases to gain practical experience. They are classified as trainees for approximately two years and draw a full salary during that period, after which they may be given the liberty to do casework without the continued direct supervision of the mentor/trainer.

39. In the private sector, an individual must find a qualified practicing document examiner who is willing to become his or her trainer. The trainee sometimes pays the trainer for the training received, and customarily trains on a part-time continuous basis for a period of about four years. As with full-time training, the trainee spends time in self-directed study (reading and writing assignments) and in working with the trainer on actual cases (to acquire hands-on practical experience, to optimize pattern recognition skills, and to develop best practices required for performing the full range of forensic document examinations required by the profession). Upon satisfactory completion of training, the trainee is qualified to do casework independently of the trainer, and usually establishes an independent business for such purpose.

40. Prior to 2005, there was no consensus within the profession regarding minimum

training requirements for FDEs, and training in this discipline was acknowledged to be "laboratory dependent." [1]

41. In 2005, the first voluntary consensus standard recommending minimum training requirements for FDEs, designated ASTM E-2388, was published by the American Society for Testing and Materials (ASTM) and adopted by the FDE industry, including Plaintiff BFDE and Defendant ABFDE. A copy of ASTM E-2388 is annexed hereto as **Exhibit A** and incorporated herein by reference.

42. ASTM E-2388 expressly provides that the training program shall be ***the equivalent of*** a minimum of 24 months full-time training under the supervision of a principal trainer, not to exceed a period of four years on a part-time basis. ASTM E-2388 does not prescribe how training is to be conducted, only the training topics to be covered.

43. Individuals trained in the private sector most often receive their fundamental training on a part-time basis, usually requiring three to four years. This is precisely why the ASTM E-2388 standard expressly provides for ***equivalent*** training on a part-time basis.

D. Board Certification of FDEs and the Significance of FSAB Accreditation

44. Board certification has often been perceived by both judges and lawyers as a prestigious qualification that reflects a high standard of training and performance and therefore enhances one's professional credentials and credibility as an expert witness. Similarly, the general public is known to place more confidence in professionals who are board-certified by a legitimate certifying board utilizing proper standards.

45. In the 1990s, confusion about what constitutes meaningful certification standards

[1] "Forensic Document Examination in the United States", Gideon Epstein MFS, James F. Larner, MSEd, and Mark Hines, MFS, Forensic Document Laboratory, U.S. Immigration and Naturalization Service, Washington, DC, presented at the 44th Annual meeting of the American Academy of Forensic Sciences, 1992.

resulted from the onset of a plethora of certifying bodies in a variety of forensic disciplines. In 2000, the Forensic Specialties Accreditation Board **(**FSAB**)** was established with the support and grant assistance of the American Academy of Forensic Sciences (AAFS), the National Forensic Science Technology Center (NFSTC) and the National Institute of Justice (NIJ). FSAB's Bylaws require that it "remain independent from any sponsoring organization in its decision-making in all matters of accreditation". In fact, one of the U.S. Department of Justice's original objectives in establishing the project to create FSAB was "[t]o establish an accrediting board, ultimately independent of the American Academy of Forensics Sciences," so that FSAB's credibility and integrity would be unquestioned.

46. The FSAB accreditation program was implemented to assist the legal profession and courts in assessing the merits of the boards that certify individuals claiming expertise in a particular forensic discipline.

47. Since its inception, FSAB has set national standards for professional boards that certify practitioners in various forensic disciplines, including forensic document examination. Although FSAB certification is not officially required by any legal regulation, FSAB is generally viewed as the "gold standard" accrediting body of certifying bodies for forensic disciplines. In this way, it is much like the American Board of Medical Specialties in medicine. FSAB accreditation, which must be renewed every five years, serves to identify professional boards exercising the highest standards for certifying experts within a certain forensic discipline.

48. Of the seventeen forensic specialty certification boards that have been accredited by FSAB, two of them certify individual FDEs, who are referred to as "Diplomates."

49. The first certifying board for FDEs to be accredited by FSAB was the Board of

Forensic Document Examiners (BFDE) in 2006; the second was the American Board of Forensic Document Examiners (ABFDE) in 2007. The BFDE and ABFDE are competitors.

50. There are currently twelve (12) BFDE-certified FDEs ("BFDE Diplomates"), the majority of whom received their training and honed their craft in the private sector.

51. There are approximately 150 ABFDE-certified FDEs ("ABFDE Diplomates"), nearly all of whom received their training and honed their craft in government settings, *e.g.*., federal, state, or municipal crime laboratories or law enforcement agencies.

E. Competition in the FDE Marketplace

52. When FDEs who were trained and employed in the public sector retire from their government service jobs, they usually start a private sector practice, often in competition with one or more already established FDEs who received their training in the private sector.

53. In many jurisdictions, some full-time salaried government FDEs are allowed to "moonlight" by accepting civil casework assignments from the private sector so long as it doesn't conflict with their obligations and duties as full-time government FDEs.

54. Consequently, competition for private sector business exists between government-trained FDEs who work either part-time or fulltime in the private sector and FDEs who received their principal training and experience outside of government service. This has created a strong economic motive for FDEs who received their training while working full-time in a government forensic laboratory to attempt to discredit any other type of training, including equivalent part-time continuous training over a period of approximately four years, which is considered the norm for training in the private sector and complies with ASTM E-2388, the acknowledged professional standard for training in this field.

55. As set forth below, despite the absence of valid, independent research studies

supporting the efficacy of one particular training method over another, FDEs trained in the public sector have knowingly published false and misleading statements claiming or implying that the two-year **full-time "in-residence" (OTJ) training** program typically encountered in the government (public) sector is the only acceptable means of training individuals for entry into the field of forensic document examination, and by inference, the only recognized means of producing skilled and competent FDEs.[2]

56. Courts having uniformly recognized and qualified both BFDE and ABFDE Diplomates as experts in forensic document examination,[3] and no FDE certified by the BFDE has ever been disqualified for not being certified by the ABFDE (and *vice versa*). Yet, as set forth below, the ABFDE has engaged in an aggressive marketing campaign directed at existing and potential customers of FDE services that is designed to drive BFDE Diplomates out of the relevant marketplace by means of false and deceptive commercial advertising which states or implies that (a) the ABFDE is the *only* recognized board for certifying forensic document examiners and (b) BFDE Diplomates are unqualified or underqualified as compared to ABFDE Diplomates because BFDE Diplomates (i) did not participate in the two-year full-time "in-residence" training program that virtually all ABFDE Diplomates allegedly received, and (ii) BFDE Diplomates are NOT members of the ABFDE-sponsoring organizations named herein as defendants or otherwise referenced herein (SAFDE, SWAFDE, ASQDE, and the AAFS Questioned Documents Section).

F. The Impact of Andrew Sulner's Role in Exposing Misleading and Disingenuous Testimony by Forensic Document Examiners and Other Forensic Science Practitioners

[2] This is akin to saying that the education and training received by students attending law school or graduate school on a part-time basis is inadequate and/or inferior to that received by full-time students, thereby rendering professionals belonging to the former group unqualified or lesser qualified than professionals belonging to the latter group.

[3] And of course, courts have qualified as experts individuals who were not certified by either of these two boards.

57. Plaintiff Andrew Sulner ("Sulner") is a BFDE-board certified forensic document examiner and attorney who earned a Master of Science degree in Forensic Science and a Juris Doctorate degree (with Honors) from George Washington University in 1975. In addition to being an officer and Executive Board member of the BFDE at all times relevant herein, Sulner has been a Fellow of the American Academy of Forensic Sciences ("AAFS") for over thirty (30) years, the past Chair of the Jurisprudence Section of the AAFS, and the recipient of the 2014 Kenneth S. Field Award for Outstanding Service to the AAFS. Sulner is also a member of the Association of Forensic Document Examiners (AFDE), the Association of Certified Fraud Examiners (ACFE), the National District Attorneys Association (NDAA), the American Bar Association (ABA), and the New York, Florida, California and District of Columbia Bars.

58. During a career that spans over 40 years, Sulner has been retained as an expert in forensic document examination by some of the nation's leading law firms, banks, insurance companies and financial institutions, as well as federal and state law enforcement agencies, regulatory agencies, prosecutors' offices, and public defenders' offices. A copy of Sulner's Curriculum Vitae is annexed hereto as **Exhibit B** and incorporated herein by reference.

59. Sulner's expert testimony as a forensic document examiner has been favorably cited in numerous federal and state court decisions, several of which have discredited the opinions and findings of opposing FDEs, some of whom were certified by the ABFDE and/or were members of one or more of the ABFDE-sponsoring organizations. These and other reported decisions in which courts have rejected and/or discredited the expert opinions of FDEs have been mentioned by Sulner in workshops and lectures presented at several annual meetings of the American Academy of Forensic Sciences (AAFS) and at other prestigious venues in order to illustrate instances of flawed and biased opinions on the part of even presumptively well-qualified handwriting experts.

60. Sulner's leading role as a forensic document examiner advocating for the implementation of practical bias control measures and blind testing procedures led to the December 2014 publication of his article, *Cognitive Bias: Handwriting*, in the *Wiley Encyclopedia of Forensic Science* [4], a copy of which is annexed hereto as **Exhibit C** and incorporated herein by reference. This encyclopedia article also cites court decisions discrediting the expert opinions and findings of FDEs who were certified by the ABFDE and/or held membership in one or more of the ABFDE-sponsoring organizations.

61. Sulner's publications and workshops have generally been intended to educate the bench and bar, among others, regarding improper methods and procedures employed by forensic document examiners on a case-by-case basis. See Sulner's Curriculum Vitae, **Exhibit B**. These efforts have illuminated cases where standard methods and practices were not properly followed by presumptively well-qualified experts, irrespective of their affiliation with any particular group or certification body. By contrast, the Vastrick Article discussed herein-below attempts to persuade the bench and bar that only ABFDE-certified FDEs are true professionals and by inference, that FDEs certified by the BFDE possess insufficient qualifications and should be viewed with skepticism as an entire class, irrespective of their training, credentials, or experience.

V. FACTUAL ALLEGATIONS SUPPORTING PLAINTIFFS' CLAIMS

A. False and Misleading Factual Statements in the Vastrick Article That Constitute Libel (Defamation) *Per Se*, False Light Invasion of Privacy, and False and Deceptive Advertising in Violation of Section 43(a) of the Lanham Act.

62. Plaintiffs repeat and re-allege the preceding paragraphs of this Complaint as though fully set forth herein.

[4] **Handwriting: Cognitive Bias,** in Wiley Encyclopedia of Forensic Science, Jamieson, A. (Editor) and Moenssens, A. (co-Editor), John Wiley & Sons, Ltd., Chichester, UK, pp. 1-15 (Dec. 2014)

63. Defendant American Bar Association ("ABA") publishes and/or owns a scholarly and widely-read quarterly journal known as the *The Judges' Journal*, which is distributed locally, nationally and internationally, in regular print (hard copy) and electronic (online) formats, to its members, courts, libraries and other subscribers. Electronic versions of *The Judges' Journal* are available to anyone for free by accessing the ABA's official website. Members of the Judicial Division enjoy a complimentary subscription to *The Judges' Journal*.

64. The ABA describes *The Judges' Journal* as an "award-winning quarterly publication" that "is one of the nation's foremost judicial journals and the authoritative source on innovations in the justice system." *The Judges' Journal* is one of several peer-reviewed scholarly journals published by the ABA that are frequently cited in briefs and major decisions.

65. At all times relevant herein, Lisa Comforty ("Comforty") was the Managing Editor of *The Judges' Journal* and was acting in the course and scope of her authority, in furtherance of the business or commercial interests of defendants ABA and The Judges' Journal and within their control or right to control.

66. At all times relevant herein, Domitrovich served on the Editorial Board of The Judges' Journal, was the Special Editions Editor of the Summer 2015 edition (Vol. 54 No. 3) of *The Judges' Journal* published by defendant ABA, was a member of the American Academy of Forensic Sciences, Inc. (AAFS) and Secretary of its Jurisprudence Section, and was a Director of the Forensic Specialties Accreditation Board ("FSAB").

67. At all times relevant to this action, Domitrovich was acting in the course and scope of her authority as a member of the Editorial Board of *The Judges' Journal* and as Special Editions Editor of the Summer 2015 edition (Vol. 54 No. 3) of *The Judges' Journal* published by defendant

ABA, in furtherance of the business or commercial interests of defendants ABA and The Judges' Journal, and within their control or right to control.

68. Pursuant to the guidelines and requirements of accreditation of the FSAB, the BFDE submitted an application for reaccreditation in April 2015. Following the submission of this application, the FSAB appointed, pursuant to its by-laws or policies and procedures, an Annual Review Committee ("ARC"), comprising three FSAB board members, to review the application and submit a written recommendation to the full FSAB board. The ARC responsible for reviewing the 2015 BFDE reaccreditation application was empaneled on or before June 8, 2015, prior to publication of the Vastrick Article. See copy of the June 8, 2015 e-mail from the ARC to BFDE representative Vickie Willard listing Domitrovich as a member of the ARC, attached hereto as **Exhibit D**.

69. Domitrovich was one of three members of the ARC responsible for reviewing the 2015 reaccreditation application of the BFDE. Upon review, the ARC submitted a written recommendation to the FSAB board advising that BFDE's application for reaccreditation be **denied**.

70. At all times relevant to this action, upon information and belief, Domitrovich was acting in concert with the ABFDE and/or Vastrick for the purposes of advancing the business or commercial interests of the ABFDE and Vastrick, and her own personal interests to the detriment of Plaintiffs.

71. At all times material hereto and prior to the actions of Defendants as detailed herein, Sulner and each of the other individuals named as Plaintiffs herein possessed a good local and national reputation as a forensic document examiner, having distinguished himself or herself as a respected member of the forensic science community.

72. At all times relevant herein, Vastrick, Domitrovich and the ABA were acting with full knowledge of the relevant false statements and material omissions contained in the Vastrick Article.

73. On August 7, 2015, Sulner received a ***pre-publication*** PDF copy of the not yet released printed version of the Summer 2015 Edition (Vol. 54 No.3) of *The Judges' Journal* via email from Lisa Comforty. Members of the Judicial Division of the ABA, which includes Sulner, received the first ABA-circulated print (hard copy) version of the Summer Edition (Vol. 54 No.3) of *The Judges' Journal* in the mail **on or after August 24, 2015**. Copies of the pages of the Summer Edition (Vol. 54 No.3) of *The Judges' Journal* that are relevant to this Complaint are annexed hereto as **Exhibit E**.

74. The front cover of this edition of *The Judges' Journal* prominently displays the words, *Forensic Sciences - Judges as Gatekeepers*, and highlights "Forensic Handwriting Comparison" as one of five listed topics covered by articles "inside this issue."

75. The first page of this issue contains an introductory article by Judge Domitrovich titled, *Introduction - Education in Forensic Sciences - Tools for Judges as Gatekeepers* (the "Introductory Article").

76. Defendant Vastrick is the author of an article, *Forensic Handwriting Comparison Examination in the Courtroom* (hereinafter the "Vastrick Article"), appearing on pages 30-34 of this issue.

77. Under the guise of offering tools to be used by trial judges in evaluating the expertise of a proffered expert in forensic document examination, the Vastrick Article makes numerous false and misleading factual statements regarding how to differentiate between "true professionals" and "unqualified" or "lesser qualified practitioners." These statements constitute

defamation (libel) *per se*, and false and deceptive advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a), and Cal. Bus. & Prof. Code § 17200 *et seq*; Cal Bus. & Prof. Code § 17500 *et seq*; North Carolina Gen. Stat. § 75-1.1; Ohio Rev. Code § 4165.02; 815 ILCS 505/2, § 2; 815 IILCS 510/2; N.Y. Gen. Bus. § 349,

False Statement(s) Regarding Training Requirements for Forensic Document Examiners
(Misstating the Published Consensus Standard Adopted by the Profession)

78. On page 33, column 2, Mr. Vastrick's states,

> "An appropriately trained forensic document examiner will have completed **a full-time, in-residence** training program lasting a minimum of 24 months **per the professional-published standard for training**." (*Emphasis supplied.)*

Vastrick follows this misstatement of the training standard with the following admonishment:

> "Judges need to be vigilant of this issue. There are large numbers of practitioners who do not meet the training standard."

79. Vastrick's statement that appropriate training requires "a ***full-time in-residence*** training program ***per the professional standard for training***" is false and contradicts what the professional community agreed upon[5] when voting to approve ASTM Standard E-2388, *Standard Guide for Minimum Training Requirements for Forensic Document Examiners*, first published in September, 2005, as indicated by the following provisions of ASTM E-2388:

> (a) *Section 6.1:* The training program shall be **the equivalent of** a minimum of 24 months full-time training under the supervision of a principal trainer (*emphasis added)*; and

> (b) *Section 6.1.1*: The training program shall be successfully completed in a period **not to exceed four years.** (*emphasis added*); and

80. The Scientific Working Groups that Vastrick references as setting standards for the

[5] Section 4.1 of ASTM E-2388 provides: The procedures outlined here are grounded in the generally accepted body of knowledge and experience in the field of forensic document examination.

forensic professions includes a committee titled *Scientific Working Group for Forensic Document Examination* (SWGDOC). The language in the SWGDOC training standard is identical to that published in ASTM E-2388:

> (a) *Section 6.1*: The training program shall be **the equivalent of** a minimum of 24 months full-time training under the supervision of a principal trainer (*emphasis added)*; and
>
> (b) *Section 6.1.1*: The training program shall be successfully completed in a period **not to exceed four years**. (*emphasis added)*

81. Full-time on-the-job (OTJ) training is purportedly the norm when the trainee is a salaried employee of a governmental agency, but such OTJ training is a rarity in the private sector. Individuals in the private sector generally receive their fundamental training on a continuous part-time basis lasting a period of three or four years. This is precisely why both ASTM E-2388 and the SWGDOC training standard cited above expressly provide for ***equivalent training on a part-time basis*** and do not require that training be conducted solely on a full-time in residence (OTJ) basis.

82. Hence, Vastrick's statement that "an appropriately trained forensic document examiner will have completed "a ***full-time in residence*** training program lasting a minimum of 24 months ***per the professional standard for training*** falsely states that ***only*** a full-time in residence training program satisfies the professional standard for training FDEs (published as ASTM E-2388).

83. Moreover, Vastrick's statement that "***an appropriately trained forensic document examiner will have completed "a full-time in residence training program lasting a minimum of 24 months***" falsely states or implies that the two-year **full-time "in-residence" (OTJ) training** program is the only acceptable or appropriate means of training individuals for entry into the field

of forensic document examination, and by inference, the only recognized means of producing skilled and competent FDEs.[6] The claim that full-time training achieved through a two-year "in-residence" program produces more skilled practitioners than any other form of training is unfounded and is not supported by any empirical data or study.

84. Vastrick had knowledge of the E-2388 training standard adopted by his profession, having served as a longstanding member of SWGDOC and ASTM's Committee E-30 on Forensic Sciences and Subcommittee E-30.02 on Questioned Documents. His misrepresentation of the consensus training standard adopted by the forensic document examination community, like the other misrepresentations and false statements contained in the Vastrick Article, were made knowingly.

85. Vastrick's certifying board (ABFDE) and the ABFDE-sponsoring membership organizations referenced herein are comprised primarily of forensic document examiners whose OTJ public sector training falls within the former category whereas the BFDE is comprised primarily of examiners whose private sector training falls within the latter category.

86. By singling out "full-time, 24-month, on-site training" that requires trainees to "physically meet with [their] trainer **every day** fulltime" as the only appropriate means of training individuals for entry into the field of forensic document examination and the only method of training judges should consider appropriate when evaluating prospective experts in this field and distinguishing between "true professionals" and "unqualified or lesser qualified practitioners," Vastrick knowingly made a false statement with the intent to disparage the reputations of the BFDE and its individual Diplomates in an effort to eliminate competition from BFDE Diplomates.

[6] This is akin to saying that the education and training received by students attending law school or graduate school on a part-time basis is inadequate and/or inferior to that received by full-time students, thereby rendering professionals belonging to the former group unqualified or lesser qualified than professionals belonging to the latter group.

False Statement(s) Regarding ABFDE Being the Only Recognized Certification Board

87. The Vastrick Article further states, on page 33, column 3,

> "The American Board of Forensic Document Examiners … is **the only certification board recognized** by the broader forensic science community, law enforcement, and courts **for maintaining principles and training requirements concurrent with the published training standards.**" (*Emphasis added.)*

88. This statement is an outright falsehood and a material misrepresentation of fact that Vastrick and Domitrovich knew to be false given their firsthand knowledge that the BFDE, as an FSAB-accredited board, was likewise required to maintain, and has maintained, principles and training requirements concurrent with the published training standards. To make matters worse, Vastrick's very next sentence, "Be wary of other certifying bodies," is a misleading and defamatory "warning" statement that implies the existence of undisclosed (defamatory) facts, further unfairly and unjustifiably impugning the reputation of the BFDE and its Diplomates.

89. Under the heading "*Gatekeeping Tips from a Practitioner*" on page 34, Vastrick writes,

> "While the field of forensic document examination has a solid foundation, some practitioners have limited training or fail to recognize or use the published standards. There are more practitioners with limited qualifications than true professionals, and effective gatekeeping is needed. While judges are responsible for being court gatekeepers, I, as a practicing forensic document examiner, would like to respectfully suggest ways to differentiate between the true professional and the lesser-qualified practitioners."

Vastrick then provides the reader with lists of things "to look for" and "to look out for" in order to differentiate a "true professional" from a "lesser-qualified practitioner," respectively. The "What to look for" list, containing the things Vastrick advises the reader (*i.e.*, judges, attorneys, and litigation consumers) to use for purposes of identifying a forensic document examiner (FDE) who is a "true professional," is reproduced below:

"1. What to look for:
a. **Certified by the American Board of Forensic Document Examiners**
b. **Member, American Society of Questioned Document Examiners**
c. **Member of Questioned Documents Section of American Academy of Forensic Sciences**
d. **Member of Southeastern or Southwestern Association of Forensic Document Examiners**
e. **Full-time, 24-month, on-site training**
f. Trainer qualifications are available
g. Actual research work"
[*Emphasis added.*]

The "What to look out for" list, containing the things Vastrick advises the reader to use for purposes of identifying a FDE who is "unqualified" or "lesser qualified," is reproduced below:

"2. What to look out for:
a. Not certified
b. **Certified by board other than American Board of Forensic Document Examiners**
c. **Member of American Academy of Forensic Sciences but not the Questioned Documents Section**
d. Practice or training in graphology (personality assessment)
e. Statements that membership in organizations is limited to government examiners and former government examiners (no such requirements for organizations exist)
f. Distance learning/correspondence courses
g. Online courses
h. "University" in name only
i. Physically meets with a trainer periodically, **not every day full time**
j. Member of organizations that do not have any government examiners"
[*Emphasis added.*]

90. As indicated above, the Vastrick Article admonishes the reader to "look for" an expert "certified by the American Board of Forensic Document Examiners" and to "look out for"

anyone who is "certified by [a] board other than American Board of Forensic Document Examiners."[7] These statements constitute defamation (libel) *per se* because they tend directly to injure BFDE Diplomates by imputing to them inadequate or lesser qualifications in those respects that trial judges must consider before accepting testimony from a proffered expert in forensic document examination. These disparaging statements imply the existence of undisclosed (defamatory) facts which would substantiate the (alleged) truthfulness of said statements.

91. Vastrick and Domitrovich had actual knowledge of the falsity of the foregoing statements and did nothing to correct same. Vastrick and Domitrovich knew that both the ABFDE and the BFDE were certified by the very same accrediting board (FSAB) and that both boards had expressly adopted and "maintained principles and training requirements concurrent with the published training standards," *to wit*, ASTM E-2388.

92. Omitting any reference to FSAB or the BFDE in the Vastrick Article reflects the author's and Domitrovich's hidden agenda in writing and disseminating the article – to mislead the bench and bar, and the general public, thereby advancing the anti-competitive agenda of the ABFDE.

False and Misleading Statements Regarding
Membership in ABFDE-Sponsoring Organizations

93. The Vastrick Article further admonishes the reader to "look for" membership in the American Society of Questioned Document Examiners[8], the Questioned Document Section of the American Academy of Forensic Sciences[9], and the Southeastern or Southwestern Association of

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[7] Vastrick's "What to look out for" list item 2b of the Vastrick Article, at page 34.
[8] Vastrick's "What to look for" list item 1b of the Vastrick Article, at page 34.
[9] Vastrick's "What to look for" list item 1c of the Vastrick Article, at page 34.

Forensic Document Examiners,[10] implying that judges should only permit members of these organizations to testify as experts.

94. The factual statement(s) in the Vastrick Article regarding membership in certain ABFDE-sponsoring organizations falsely implies that there exists a tangible competency divide between FDEs that can be measured solely on the basis of membership in one of these organizations and that FDEs who are members of one or more of such organizations possess better training and skills that those who are not, such as Plaintiffs.

95. Proper training is essential for competency in forensic document examination as in any other forensic discipline that is primarily experience-based, but it is not the case, and it is false and misleading to state or imply, that if you are ***not*** certified by the ABFDE or ***not*** a member of one of its sponsoring organizations, you are, *ipso fact*, "unqualified" or "lesser qualified" than ABFDE Diplomates or members of ABFDE-sponsoring organizations.

96. The foregoing statements regarding membership in certain ABFDE-sponsoring organizations were made and published with knowledge of their falsity and/or reckless disregard of the truth.

Defamatory and Offensive Statement(s) Targeting (Made with Specificity Regarding) Plaintiff Sulner

97. Under the guise of offering "tools" to be used by trial judges and lawyers in evaluating forensic document examiners proffered as experts and in differentiating "true professionals" from "unqualified or lesser qualified practitioners," the Vastrick Article admonishes the reader to "look out for" a forensic document examiner who is a "Member of [the] American Academy of Forensic Sciences but not the Questioned Document Section."[11]

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[10] Vastrick's "What to look for" list item 1d of the Vastrick Article, at page 34.
[11] Vastrick's "What to look out for" list item 2c of the Vastrick Article, at page 34.

98. This statement is nothing more than a baseless ad hominem attack specifically directed at plaintiff Sulner, who at the time was the BFDE Vice-President, a member and immediate past Chair of the Jurisprudence Section of the American Academy of Forensic Sciences (AAFS), and widely known to be the only forensic document examiner who is a member of the AAFS but not the Questioned Document Section.

99. This statement falsely implies that plaintiff Sulner is not a "true" professional and is "unqualified" or "less qualified" as a forensic document examiner by virtue of being a member of the AAFS but not the Questioned Document Section.

100. This statement, made with knowledge of its falsity and with malice, is defamatory *per se,* having impugned the reputation, skill and expertise of Sulner as a forensic document examiner.

101. This false statement and its implications tended to lower the plaintiff's reputation in the estimation of the forensic science community, the legal profession, the judiciary, and the general public, and to expose the plaintiff to contempt and ridicule and deter third persons from hiring him as an FDE and even associating or dealing with him.

102. Vastrick made this false statement with the intent to cause, and did cause, Sulner extreme emotional distress.

103. Vastrick's failure to disclose that an AAFS member can only belong to one Section of the AAFS[12] reflects Vastrick's bias and personal animus towards Sulner.

104. The fact that an AAFS member can only belong to one section of the AAFS is a material fact that was known to Vastrick, Domitrovich and the ABA prior to the publication of the

[12] A person such as Sulner, who qualifies for membership in more than one section of the AAFS, must nonetheless, at the time of applying for membership, elect which AAFS Section to apply for membership in because AAFS members can apply for membership and belong to ***only*** one Section.

Vastrick Article, yet such material fact was intentionally omitted from the Vastrick Article.

105. Given what they knew or should have known, making and publishing this false statement reflects conduct on the part of the Defendants that was offensive, malicious, and exceeded all reasonable bounds of decency.

106. The Defendants published the defamatory and invasive statement targeting FDE Sulner knowing it was likely to damage his reputation and cause him to suffer humiliation, embarrassment, emotional distress, mental anguish and suffering, and a loss of standing in the community, in his profession, and among the bench and bar nationwide.

107. Plaintiff Sulner is entitled to recover from the Defendants such damages as will compensate him for the damage to his reputation and standing in the community and his profession, his mental anguish and suffering, and his humiliation and embarrassment, as well as punitive damages and equitable relief.

The ABA's Response to Objections, Warnings and Demands from Sulner and the BFDE

108. Upon reading the **pre-publication** version of the Vastrick Article received from Comforty on August 7, 2015, Sulner became upset by the various false, misleading and defamatory statements made by the author (Vastrick) and endorsed by Domitrovich and the ABA under the guise of offering "tools" to be used by trial judges and lawyers in evaluating forensic document examiners proffered as experts and in differentiating "true professionals" from "unqualified or lesser qualified practitioners."

109. Accordingly, on that very same afternoon of August 7, 2015, Sulner immediately placed a phone call to Comforty and conferenced in Domitrovich so as to simultaneously inform them about the objectionable and defamatory content of the Vastrick Article and the need to halt its dissemination pending review of the matter by the ABA's legal counsel. This phone call was

followed up by an email sent by Sulner to Comforty and Domitrovich later that evening, the content of which is reproduced below:

> -----Original Message-----
> From: Andrew Sulner <andysulner@aol.com>
> To: Lisa.Comforty <Lisa.Comforty@americanbar.org>
> Cc: Sdomitrovich <Sdomitrovich@eriecountygov.org>
> Sent: Fri, Aug 7, 2015 8:19 pm
> Subject: Re: Handwriting expert Andrew Sulner, Esquire
>
> Lisa,
>
> Thanks so much for receiving my phone call very late this afternoon and for speaking to me and then to Stephanie. The article authored by Mr. Vastrick in the Summer 2015 issue of the Judges Journal contains several unfounded, untruthful and defamatory statements and, as I explained, the context in which they appear may very well preclude them from being deemed nonactionable opinion. This factor, coupled with your unrelated email earlier today advising me that the electronic version of this issue containing the objectionable Vastrick article is not yet out, prompted my urgent call to you and Stephanie, hoping that any or further dissemination of this article can be halted pending review of this matter by your counsel.
>
> I am more than happy to discuss this matter with your counsel in an amicable effort to alleviate this situation and to minimize any adverse consequences of publishing the Vastrick article in its current state.
>
> By way of introduction, and to assure you and your attorney(s) that I am not an uninformed or unreasonable "critic," I have taken the liberty of attaching my current CV and two of my recent publications.
>
> Have a great weekend and thanks again for displaying the wisdom of seeking the opinion of your independent counsel.
>
> Sincerely,
> Andy Sulner

110. Sulner's August 7, 2015 phone call and email to Comforty was followed up by a phone call from the ABA's General Counsel, Jarisse Sanborn, Esq. ["Sanborn"], to Sulner on August 11, 2015, at which time Sulner informed Sanborn of some of the false and misleading statements contained in the Vastrick Article. Sanborn requested Sulner and the BFDE to elaborate in writing as to what they find objectionable in the article, which Sulner and the BFDE did in two

demand letters sent via email to Sanborn on August 13, 2015 and a third one sent on August 25, 2015. Copies of these three letters are annexed hereto as **Exhibit F**, and the contents of same are incorporated herein by reference.

111. On September 11, 2015, Sanborn responded in writing to the two August 13, 2015 letters sent by Sulner and the BFDE. A copy of Sanborn's September 11, 2015 letter is annexed hereto as **Exhibit G** and incorporated herein by reference. This letter stated, in pertinent part:

> While it appears there is a reasonable academic dispute over the subject of the Article, ABA's inquiry leads us to the view, ***as confirmed with Mr. Vastrick***, that the Article is fair and accurate and that it contains non-defamatory commentary reflecting the author's own opinions and judgment on matters that are surely the subject of professional and disputable opinion. [fn] . . . ABA has concluded that the Article was designed to present a set of professional opinions, with which others might well choose to disagree. We do not see that Mr. Vastrick's discussion represents or evidences any intent to defame any individual or organization. As you know, BFDE was not mentioned or referenced in the Article." [*Emphasis supplied*.]

[fn] The Judges' Journal contains a disclaimer that "Articles represent the opinions of the authors alone" which is further reiterated by Mr. Vastrick within the content of the Article.

112. Sanborn's September 11, 2015 letter provided the first notification that the hard copy of *The Judges' Journal* issue containing the Vastrick Article (Vol. 54 No. 3) had been circulated **BEFORE** receipt of the aforementioned August 13, 2015 letters from the BFDE and Sulner. See **Exhibit G** at 1. Upon information and belief, this printed (hard copy) issue of *The Judges' Journal* was actually circulated on or about August 24, 2015, after receipt of the August 13, 2015 letters from the BFDE and Sulner, and **AFTER** August 7, 2015, when Comforty had informed Sulner that the hard copy had not yet been circulated.

113. Sanborn's September 11, 2015 letter offered the BFDE the opportunity to submit a rebuttal article, which the BFDE submitted on October 12, 2015. A copy of the BFDE's October 12, 2015 transmittal letter and the rebuttal article (hereinafter "BFDE Rebuttal Article Ver. 1") are annexed hereto as **Exhibit H** and incorporated herein by reference.

114. By letter dated November 4, 2015, Sanborn advised Sulner (and the BFDE) that BFDE Rebuttal Article Ver. 1 was reviewed and rejected by the Judges' Journal Editorial Board on the ground that it "does not conform to editorial guidelines due to its length and tone." A copy of Sanborn's November 4, 2015 letter is annexed hereto as **Exhibit I** and incorporated herein by reference.

115. By letter dated November 5, 2015, a copy of which is annexed hereto as **Exhibit J** and incorporated herein by reference, Sulner (and the BFDE) replied that the article's length at 3575 words was within the word-limit of 4,000 words and asked to clarify the ABA's objection to the "tone" of the article.

116. Thereafter, email exchanges between counsel for the ABA and the BFDE resulted in the BFDE's November 23, 2015 submission of a 2,983-word BFDE rebuttal article ("BFDE Rebuttal Article 2"), revised to satisfy the Editorial Board's claim of a newly imposed 3,000-word limit for articles submitted for publication in the *Judges' Journal*. A copy of BFDE Rebuttal Article 2 is annexed hereto as **Exhibit K** and incorporated herein by reference.

117. On January 6, 2015, Comforty sent an email to Sulner attaching a substantially edited and significantly shortened version of BFDE Rebuttal No. 2, reduced in length to less than 1200 words.

118. On February 3, 2016, Sulner replied to Comforty in a demand letter stating that the abridged and edited version of the rebuttal-article failed to address the inaccurate information contained in the Vastrick Article. A true and accurate copy of Sulner's February 3, 2016 letter to Comforty is annexed hereto as **Exhibit L** and incorporated herein by reference.

119. On February 10, 2016, Jessica Perez Simmons, Esq. ("Simmons"), Senior Associate General Counsel for the ABA, advised Sulner and counsel for the BFDE (Eric E. Hobbs,

Esq.) via email stating the Vastrick Article will be electronically published without further changes and that Sulner and the BFDE may write letters to the editor.

120. On February 18, 2016, the same day Sulner was appearing as Moderator and Speaker at the Plenary Session of the AAFS Annual Meeting in Orlando Florida, Simmons sent an email to Sulner and BFDE counsel Eric E. Hobbs, Esq., stating:

> This is to advise you The Judges' Journal is now electronically posted with a couple of revisions (**although we do not believe such revisions are necessary**) to accommodate your and BFDE's objections. [*Emphasis added*]

A copy of the electronic version of the Vastrick Article that was posted to the ABA's official website on or about February 18, 2016 (hereinafter the "2016 online version of the Vastrick Article") is annexed hereto as **Exhibit M**.

121. The revisions made by the ABA to the 2016 online version of the Vastrick Article were as follows:

(a) removing the language from "What to look out for" list item 2b that said "Certified by board other than American Board of Forensic Document Examiners" and replacing it with "Providing misleading or information as to professional organization memberships," and

(b) removing the language from the "What to look out for" list (originally item 2c) that specifically targeted plaintiff Sulner, *to wit*, "a Member of the American Academy of Forensic Sciences but not the Questioned Document Section."

In all other respects, the 2016 online version of the Vastrick Article remained the same as the original (hard copy) version published in August 2015 and then republished in the Fall /Winter of 2015 by Domitrovich and Vastrick (and recirculated by countless others who received PDF copies of the original Vastrick Article from Domitrovich and/or Vastrick).

122. The ABA has never printed a clarification or correction of the statement that

appeared in the original Vastrick Article which falsely implied that plaintiff Sulner is not a "true" professional and is "unqualified" or "less qualified" as a forensic document examiner by virtue of being a member of the AAFS but not the Questioned Document Section. Nor did the ABA make any effort to comply with Mr. Sulner's written request that the ABA and Editorial Board of *The Judges' Journal* insert an Editor's Note in the 2016 online version of the Vastrick Article wherein the ABA apologizes to Mr. Sulner and informs its readers that an objectionable statement targeting Mr. Sulner, the only forensic document examiner known to be a member of the American Academy of Forensic Sciences but not the Questioned Documents Section, was removed from the original version of the Vastrick Article initially published by the ABA because it was untrue and constituted a baseless ad hominem attack against said Plaintiff, a highly respected forensic document examiner with impeccable credentials.

123. On February 18, 2016, the ABA posted online the revised Vastrick Article without including an Editorial Note apologizing to Mr. Sulner and/or advising the *Judges' Journal* readers of the fact of, or reasons for, the removal of two of the objectionable statements that appeared in the original print version of the Vastrick Article. Moreover, the ABA's refusal to print a clarification of any kind, and its unsubstantiated claim that it made the revisions "although [it did] not believe such revisions are necessary," reflects a callous and knowing indifference to the reputational harm and severe emotional distress the objectionable statements caused and continue to cause in the absence of a published retraction and apology from the ABA and The Judges' Journal.

124. Additionally, the timing of the 2016 online posting was calculated by the Defendants to cause, and did cause, Sulner further emotional distress. The Defendants knew that releasing the online version of the Vastrick Article on February 18, 2016 would coincide with the

mid-February weeklong Annual Meeting of the AAFS in Las Vegas, Nevada, which was attended by several thousand members of the forensic science, legal, and judicial communities, many of whom would have received the print copy of *The Judges' Journal* containing the Vastrick Article, a circumstance which would therefore exacerbate and increase the emotional pain and suffering, humiliation, and embarrassment felt by Sulner and other BFDE Diplomates in attendance, especially in the absence of any notification or clarification on the part of the ABA and The Judges' Journal effectively apologizing to Sulner and advising readers of both the online version and the original print version of the Vastrick Article about the two corrections that were made by the ABA and/or the Judges' Journal Editorial Board and the reasons for removing the two objectionable statements that appeared in the original print version.

125. Although duly requested and timely demanded by Sulner, the ABA did not publish, refused to publish, and has yet to publish an apology and notice of retraction of the false and defamatory statement that targeted plaintiff Sulner. The ABA has intentionally or recklessly disregarded the truth and its legal duty to mitigate the economic damages, emotional pain and suffering, and embarrassment and humiliation resulting from its initial hard copy circulation of the Vastrick Article and the subsequent electronic circulation of the online version of same without including an appropriate notification (clarification) and apology to plaintiff Sulner.

The Vastrick Article's Tone and the Context of Its Appearance in The Judges' Journal Would Cause a Reasonable Reader to View the Article's Statements as Being Assertions of Fact

126. As set forth *supra*, the ABA describes *The Judges' Journal* as an "award-winning quarterly publication" that "is one of the nation's foremost judicial journals and the authoritative source on innovations in the justice system." *The Judges' Journal* is one of several peer-reviewed scholarly journals published by the ABA that are frequently cited in briefs and major decisions.

127. An examination of context in this case strongly suggests that the statements at issue

would cause a reasonable reader to conclude that the challenged statements were factual assertions and not expressions of opinion.

128. Page 1 of the Summer 2015 Edition (Vol. 54 No. 3) of *The Judges' Journal* containing the objectionable Vastrick Article contains an introductory article written by Judge Domitrovich. The article, titled *Introduction - Education in Forensic Sciences - Tools for Judges as Gatekeepers*, exacerbates the harmful impact of the Vastrick's false and defamatory statements by suggesting to the reader that Vastrick speaks with authority and presents accurate facts. This is reflected in the following language contained in Judge Domitrovich's "Introduction":

- "this issue offers articles written by renowned experts to provide scientific knowledge to judges and lawyers";
- "[t]hese authors offer expertise in ... forensic handwriting comparison examinations;" and
- "[t]he authors in this issue are fulfilling their role as experts and educators by providing us with tools to ensure justice for all."

129. Given its tone and overall context, it is reasonable to conclude that after reading the Vastrick Article, judges evaluating the credentials of proffered experts and lawyers seeking to hire the services of an expert forensic document examiner will be unduly influenced and misled by the false and defamatory statements contained in this article; reasonable readers of this article will view the challenged statements as factual assertions and will undoubtedly become cognitively biased against BFDE Diplomates, such as the individual Plaintiffs named herein.

Defendant ABA Verified the Accuracy of Vastrick's Statements with Sources
It Knew or Should Have Known to Be Less than Reliable

130. Domitrovich, as a member of the Editorial Board of the Judges Journal and as Special Editions Editor for its Summer 2015 Edition (Vol. 54, No. 3), and Comforty, as Managing Editor of *The Judges' Journal*, bore principal responsibility for reviewing the Vastrick Article to

ensure that its content was accurate and not false, misleading, or offensive.

131. At all times relevant herein, Domitrovich was a member of the FSAB Board that accredited both the ABFDE and the BFDE, and Domitrovich was a member of FSAB's three-member ARC that was concurrently reviewing the BFDE's pending application for FSAB reaccreditation, as is required every five years under FSAB guidelines.

132. At all times relevant herein, Domitrovich was Secretary of the Jurisprudence Section of the AAFS and knew that a member of the AAFS can only belong to one Section of the AAFS, and such knowledge was independently conveyed to the ABA prior to the publication of the Vastrick Article.

133. The ABA's failure to take appropriate steps to correct the false, misleading, and offensive representations contained in the Vastrick Article prior to its publication is inexcusable given what Domitrovich, Comforty and the ABA knew or should have known at that time. The ABA's willingness to overlook the Vastrick Article's failure to even mention FSAB or its significant role in accrediting forensic specialty certification boards reflects FSAB Director Domitrovich's affirmation of the misrepresentations against the BFDE, as imputed to and adopted by the ABA.

134. At all times relevant herein, Domitrovich knew, and the ABA was specifically informed, that Vastrick had a personal animus against plaintiff Sulner and the BFDE and that Vastrick's statement admonishing the reader to "look out for" a forensic document examiner who is a "Member of [the] American Academy of Forensic Sciences but not the Questioned Document Section" was a baseless ad hominem attack specifically directed at Sulner. Yet, as indicated in Sanborn's September 11, 2015 letter (Exhibit G), the ABA "confirmed" the fairness and accuracy of the information contained in the Vastrick Article with Vastrick himself, the main source of the

information, rather than some other impartial primary source.

135. In light of the ABA's actual and/or imputed knowledge of Vastrick's personal animus and hostility toward Sulner and the BFDE, the ABA had sufficient reason to question the bona fides of Vastrick and the truth of what he told the ABA. A publisher who is truly concerned about factual accuracy should not and would not rely upon the author for verification of the accuracy of information provided by the very same source.

136. Moreover, the ABA had actual knowledge of two published court decisions that clearly indicated that Vastrick's professional opinions were not always well regarded by courts, and in at least one instance, were found to be less credible than that of a BFDE-certified opposing expert, Steven Slyter, who was at the time President of the BFDE, a circumstance which is likely to have reinforced Mr. Vastrick's already existing hostility towards the BFDE and its Diplomates.

137. These two cases were brought to the attention of the ABA and specifically included in both versions of the BFDE Rebuttal Article that were submitted to the ABA (**Exhibits H and K** hereto).

138. Despite Sulner's and the BFDE's good faith attempts to resolve this matter without litigation, the ABA and *The Judges' Journal* failed to comply with the reasonable demands set forth in writing by Sulner and the BFDE.

The Defendants Acted Intentionally or Recklessly
in Disregarding and/or Avoiding the Truth

139. Defendant ABA and the Editorial Board of The Judges' Journal have a reputation for being assiduous and thorough fact-checkers, but failed to comport themselves as such in this case.

140. As a result of that unwarranted reputation, the damage caused Plaintiffs by the Vastrick Article has been compounded because it has been widely circulated and commented upon,

thereby repeating and giving wider circulation to some of the defamatory falsehoods it contains, with readers essentially assuming that "it must be true because it's in *The Judges' Journal*."

141. Defendants ABA and The Judges' Journal reviewed, edited, and approved for publication the Vastrick Article.

142. Defendant ABA and the Editorial Board of The Judges' Journal had more than ample time and opportunity to investigate and ascertain the falsity of the statements made by Vastrick in the Vastrick Article before publishing it.

143. The ABA and the Editorial Board of The Judges' Journal acted from preconceived prejudices and over-reliance on untrustworthy or biased sources.

144. The ABA and the Editorial Board of The Judges' Journal willfully chose to ignore any information that would serve to undermine Vastrick's credibility as a source of accurate and reliable information and chose to ignore any information known to be accurate but contrary to the "conclusions" stated or implied from the false and misleading statements contained in the Vastrick Article.

145. The allegations set forth in this Complaint show that the ABA purposefully disregarded the truth and/or avoided further investigation into ascertaining the truth with the intent to avoid the truth. This conduct constitutes a reckless disregard to ascertain the truth, and a further disregard for the reputations and mental anguish experienced by the plaintiffs as a result of the false, misleading, and offensive statements which had been made known to the ABA in advance of publication.

146. The allegations set forth in this Complaint show that the ABA knew or should have known that the Vastrick Article contained material factual statements and representations that were false and caused severe reputational harm to the Plaintiffs' that was specifically intended to

dissuade potential customers from retaining the professional services of the Plaintiffs, and diminishing the Plaintiffs' professional stature in the eyes of the judiciary; the ABA knowingly elected to publish the article will full awareness of its harmful implications.

147. The ABA and The Judges' Journal failed to include information known to be accurate but contrary to the "conclusions" stated or implied from the false and misleading statements contained in the Vastrick Article. Subsequently, they failed to publish such information in an effort to at least mitigate the damaging effect of having published the false and misleading statements contained in the Vastrick Article.

148. Plaintiffs seek damages and injunctive relief, as well as a determination that the conduct of the ABA constitutes deliberate, willful and/or bad faith conduct such that this case should be declared an exceptional case under 15 U.S.C. § 1117(a).

Domitrovich Republished (Recirculated) the Vastrick Article to AAFS Members and Others At a Time When She Knew the ABA Had Agreed to Halt Its Further Circulation

149. The *Academy News* is a bi-monthly publication of the American Academy of Forensic Sciences (AAFS) that is distributed to all 7,000 AAFS members and is posted online for free public access worldwide. The September 2015 issue (Vo. 45, No. 5) of the *Academy News* contained the following Jurisprudence Section News announcement that was written and submitted by Domitrovich for publication:

> "Stephanie Domitrovich is the recent Special Issues Editor for the American Bar Association's Judicial Division's *Judges' Journal* Summer 2015 Edition which is entitled "FORENSIC SCIENCES: Judges as Gatekeepers." In a few weeks, a website link will be available on the ABA's *Judges' Journal* website or you may contact Stephanie Domitrovich (sdomitrovich@eriecountygov.org) and she will send you a hard copy PDF of the entire issue. Jurisprudence members Ted Vosk and Carol Henderson also contributed to this edition."

150. Despite knowing that the ABA had agreed to halt circulation of the Summer 2015 Edition of *The Judges' Journal* containing the objectionable Vastrick Article, during the time period that the ABA agreed to halt further circulation of the Vastrick Article, Domitrovich nevertheless republished the Vastrick Article by electronically distributing and recirculating a PDF version of the entire issue of Summer 2015 Edition of *The Judges' Journal* (hereinafter referred to as "Domitrovich's Fall 2015 Republication") to members of the Jurisprudence Section of the AAFS as well as other members of the bench and bar and other individuals whose identities are presently unknown, many of whom most likely recirculated the issue to countless others whose identities will never be known.

151. By willfully disregarding the "hold" the ABA placed on further circulation of the issue of *The Judges' Journal* containing the objectionable Vastrick Article, Domitrovich's Fall 2015 Republication tends to underscore the Plaintiffs' claim(s) that Domitrovich acted with malice, and in a manner that was specifically intended to cause and did cause Plaintiff Sulner further emotional distress and embarrassment in the forensic science and legal community as a direct result of such republication and recirculation of the Vastrick Article.

Vastrick Republished (Recirculated) the Vastrick Article to AAFS Members and Others At a Time When He Knew the ABA Had Agreed to Halt Its Further Circulation

152. Despite knowing that the ABA had agreed to halt circulation of the Summer 2015 Edition of *The Judges' Journal* containing the objectionable Vastrick Article, during the time period that the ABA agreed to halt further circulation of the Vastrick Article, Vastrick nevertheless republished the Vastrick Article by electronically distributing and recirculating a PDF version of same (hereinafter referred to as "Vastrick's Fall 2015 Republication") to members of the AAFS as well as other members of the forensic science and legal community whose identities are presently unknown, many of whom most likely recirculated the issue electronically to countless others whose identities will never be known.

153. By willfully disregarding the "hold" the ABA placed on recirculating the issue of *The Judges' Journal* containing the objectionable Vastrick Article, Vastrick's Fall 2015 Republication tends to underscore the Plaintiffs' claim(s) that Vastrick acted with malice, and in a manner that was specifically intended to cause and did cause Plaintiff Sulner further emotional distress and embarrassment in the forensic science and legal community as a direct result of such republication and recirculation of the Vastrick Article.

Domitrovich and Vastrick Republished the Vastrick Article in 2015 with Actual Malice

154. Defendants Domitrovich and Vastrick, jointly and severally, acted with actual malice in that they knew or should have known that many of the statements of fact in the Vastrick Article were false and misleading, yet they approved, published and republished said article notwithstanding that knowledge.

155. The failure on the part of Domitrovich and Vastrick to include information known to be accurate but contrary to the "conclusions" stated or implied from the false and misleading statements contained in the Vastrick Article, or to subsequently correct such false and misleading information in an effort to at least mitigate the damaging effect of having published and republished it, tends to underscore the Plaintiffs' claims that Domitrovich and Vastrick acted with actual malice.

156. Domitrovich and Vastrick republished the Vastrick Article in the Fall/Winter of 2015 knowing that such republication was likely to damage the reputation of Sulner and the other BFDE Diplomates named as plaintiffs herein, and did so with the intent to cause them, and the result of causing them, humiliation, embarrassment, mental anguish and suffering, and a loss of standing in the community, in their profession, and among the bench and bar nationwide.

157. Plaintiffs seek damages and injunctive relief, as well as a determination that the conduct of both Domitrovich and Vastrick constitutes deliberate, willful and/or bad faith conduct such that this

case should be declared an exceptional case under 15 U.S.C. § 1117(a) with respect to each of them, jointly and severally.

B. False and Misleading Statements Claiming or Implying that the ABFDE is "The Only Recognized Certifying Board for Forensic Document Examiners" – Violations of Section 43(a) of the Lanham Act and the Tennessee Consumer Protection Act

158. Plaintiffs repeat and re-allege the preceding paragraphs of this Complaint as though fully set forth herein.

Violation of Lanham Act Section 43(a)

159**.** The Vastrick Article improperly and unlawfully claims or implies that the American Board of Forensic Document Examiners (ABFDE) is the only recognized national certifying body for forensic document examiners.

160. In addition to the Vastrick Article which is the subject of the instant matter before the Court, the following statements attributed to Vastrick have been published and disseminated by him in writing available on the website of American Society of Questioned Document Examiners (ASDQE) and his

a) "The ABFDE is the only certification body that is recognized by all federal government agencies employing Forensic Document Examiners along with many state and municipal law enforcement agencies. The ABFDE is also the only certification board that meets published ASTM standards for required education and training. The ABFDE is accredited by Forensic Specialties Accreditation Board (FSAB)." See Vastrick's *Curriculum Vitae*, published online and available at (last checked April 22, 2017), a copy of which is attached hereto as **Exhibit N**.

b) "Don't be fooled by other "boards" that may use fancy names or even names similar to the American Board of Forensic Document Examiners." See Webpage titled "Certification" published online and available at www.asdqe.org/vastrick/certify.htm (last checked April 22, 2017), a copy of which is attached hereto as **Exhibit O**.

161. The omission of any reference to FSAB in the Vastrick Article reflects Vastrick's and Domitrovich's true intentions in selectively omitting material facts from the article – facts which are extremely important for legal professionals to be made aware – in order to serve the

predetermined and longstanding anti-competitive agenda of Vastrick and the ABFDE to eliminate competition from the BFDE and its Diplomates by publishing in print and media false and deceptive statements designed to impugn the legitimacy of BFDE certification and to harm the reputations of BFDE Diplomates in order to mislead prospective consumers of FDE services into believing that any FDE certified by a board other than the ABFDE is "unqualified" or "lesser qualified" than FDEs certified by the ABFDE.

162. The false and misleading statements and generally deceptive messages relayed by Mr. Vastrick in the Vastrick Article are harmful to the public as well as Plaintiffs, and constitute unlawful violations of Section 43(a) of the Lanham Act and Deceptive Business Practices Act of the Plaintiffs' various states**.** The comments in the article, taken together, evidence an intent to impugn the credibility of BFDE certification of its Diplomates, with the goal of depriving or eliminating the BFDE and its Diplomates of their good standing and professional credibility within the community.

PLAINTIFFS' CLAIMS

FIRST CAUSE OF ACTION

All Plaintiffs against Defendants re Vastrick Article
[Defamation/Libel *Per Se*/Invasion of Privacy/False Light]

163. Plaintiffs repeat and re-allege the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

164. The Vastrick Article specifically and unambiguously stated and/or implied that a forensic document examiner is not a "true" professional and is "unqualified," "underqualified," or "lesser qualified" by virtue being "certified by a board other than the American Board of Forensic Document Examiners."

165. The Vastrick Article specifically and unambiguously stated and/or implied that

a forensic document examiner is not a "true" professional and is "unqualified," "underqualified," or "lesser qualified" by virtue of NOT being a member of one or more of the ABFDE-affiliated organizations, namely, the American Society of Questioned Document Examiners, the Questioned Document Section of the American Academy of Forensic Sciences, and the Southeastern or Southwestern Association of Forensic Document Examiners.

166. Each of the foregoing statements is false and defamatory *per se* because it is injurious to Plaintiffs in their trade and business. Each of the foregoing statements is libelous due to its written publication and dissemination nationwide, including in the relevant District. Each of the foregoing statements is an invasion of privacy which places each Plaintiff in an untrue and false light which was highly offensive and injurious to each Plaintiff, respectively.

167. The Defendants made and published each aforementioned statement of fact and/or statement of mixed opinion and fact (which is made actionable because it implies undisclosed sets of defamatory facts underlying the opinion) in an intentionally false or otherwise malicious defamatory manner (*i.e.*, with reckless disregard for the truth) and distributed same (in the form of the Vastrick Article) throughout the United States and the rest of the world.

168. Vastrick states that "an appropriately trained forensic document examiner will have completed a full-time, in-residence training program lasting a minimum of 24 months per the *profession-published standard* for training." However, ASTM E – 2388, *Standard Guide for Minimum Training Requirements for Forensic Document Examiners,* expressly provides in the section labeled "Procedures" for an "*equivalent of* a minimum of 24 months of full-time training" that shall be completed "in a period *not to exceed four years*," clearly contemplating

a *part-time* program, with no reference to in-residence training. See Exhibit A, Section 6.1 and Section 6.2.

169. Vastrick, Domitrovich and the ABA intentionally misled the "public," and the audience of lawyers and judges, which comprises the Plaintiffs' clientele, that FDEs who acquired their training on a part time basis fail to meet the "profession-published standard" for training.

170. The Vastrick Article acknowledges the ASTM as the source of numerous industry-adopted consensus standards, mentioning that ASTM Standard E-2290, *Standard Guide for Examination of Handwritten Items,* "codifies" "specific methodology used for handwriting comparisons," but the article fails to mention ASTM E-2388, the training standard that clearly undercuts Vastrick's statements.

171. Domitrovich, as a contributor to and editor of the Vastrick Article, failed to take any corrective action regarding the false and misleading statements *even after* Sulner informed her of the inaccurate statements. Moreover, as one of the three members of the ARC reviewing the BFDE's reaccreditation application, she was at that time comparing and analyzing ASTM E-2388 and knew that Vastrick's statements did not accurately describe the ASTM training standards.

172. The ABA, as the publisher, knew that the Vastrick Article contained false and misleading statements but took no corrective action.

173. Each of the aforementioned statements made and published by the Defendants had, and continues to have, a defamatory and fallacious effect because it has impugned the professional reputation and standing of Plaintiffs and has had an adverse effect upon their business interests and reputations as forensic document examiners.

174. Plaintiffs are entitled to recover from the Defendants such damages as will compensate them for the damage to their reputations and standing in the community and their profession, their mental anguish and suffering, and their humiliation and embarrassment.

175. Plaintiffs are also entitled to an award of punitive damages because the Defendants acted in a malicious, wanton, reckless, willful and oppressive manner warranting an award of punitive damages.

SECOND CAUSE OF ACTION
All Plaintiffs against Defendants re Vastrick Article
[False Advertising: Violation of Lanham Act, 15 U.S.C. § 1125(a)(1)]

176. Plaintiffs repeat and re-allege the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

177. The Vastrick Article specifically and unambiguously stated and/or implied that a forensic document examiner is not a "true" professional and is "unqualified," "underqualified," or "lesser qualified" by virtue being "certified by a board other than the American Board of Forensic Document Examiners."

178. The Vastrick Article specifically and unambiguously stated and/or implied that a forensic document examiner is not a "true" professional and is "unqualified," "underqualified," or "lesser qualified" by virtue of NOT being a member of certain ABFDE-sponsoring organizations, namely, the American Society of Questioned Document Examiners, the Questioned Document Section of the American Academy of Forensic Sciences, and the Southeastern or Southwestern Association of Forensic Document Examiners.

179. The foregoing false and misleading representations of fact actually deceive, or have the tendency to deceive, a substantial segment of existing and potential customers of the Plaintiffs. This deception is material in that it concerns the inherent quality of their professional

expertise and is likely to influence the purchasing decisions of potential customers seeking to hire a forensic document examiner by causing them to refrain from hiring BFDE Diplomates.

180. Through these false and misleading statements of fact, selective omission of material facts, and innuendo, the Vastrick Article paints a portrait of Plaintiffs which has no basis in reality and which has been highly damaging to their reputation.

181. The Defendants, jointly and severally, caused these false and misleading representations of fact to be published with knowledge of their falsity and/or with reckless disregard for the truth.

182. These false and misleading representations of fact violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1), and injure both the Plaintiffs and consumers, including the legal professionals who retain the services of FDEs, by effectively directing consumers to only ABFDE-recognized professionals.

183. These false and misleading representations of fact made and published by the Defendants have disparaged and impugned the professional reputation and standing of the Plaintiffs and have had, and continue to have, an adverse effect upon their business interests and reputations as forensic document examiners.

184. Plaintiffs are entitled to recover from the Defendants such damages as will compensate them for the damage to their reputations and standing in the community and their profession, their mental anguish and suffering, and their humiliation and embarrassment.

185. Plaintiffs are also entitled to an award of punitive damages because the Defendants acted in a malicious, wanton, reckless, willful and oppressive manner warranting an award of punitive damages.

186. Plaintiffs seek damages and injunctive relief, as well as a determination that the conduct of the Defendants constitutes deliberate, willful and/or bad faith conduct such that this case should be declared an exceptional case under 15 U.S.C. § 1117(a).

187. Plaintiffs are entitled to an award of statutory damages and penalties, including attorneys' fees and the costs of this action, pursuant to 15 U.S.C. § 1117(a).

THIRD CAUSE OF ACTION
Sulner against Defendants re Vastrick Article
[Defamation/Libel *Per Se*/Invasion of Privacy/False Light]

188. Sulner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

189. The Vastrick Article made a statement targeting Sulner specifically by unambiguously stating or implying that a forensic document examiner is not a "true" professional and is "unqualified," "underqualified," or "lesser qualified" by virtue being a "Member of the American Academy of Forensic Sciences but not Questioned Document Section."

190. The foregoing statement of fact is false and defamatory *per se* because it is injurious to Sulner in his trade and business. Each of the foregoing statements is libelous due to its written publication and dissemination nationwide, including in the relevant District. Each of the foregoing statements is an invasion of privacy which places Plaintiff Sulner in an untrue and false light which was highly offensive and injurious to said Plaintiff.

191. The Defendants, jointly and severally, caused the false and defamatory statement to be published with knowledge of its falsity and/or with reckless disregard for the truth.

192. The Defendants made and published this statement of fact and/or statement of mixed opinion and fact (which is made actionable because it implies undisclosed sets of defamatory facts underlying the opinion) in an intentionally false or otherwise malicious defamatory manner (*i.e.*, with reckless disregard for the truth) and distributed same (in the form of the Vastrick Article) in New York and throughout the rest of the United States and world.

193. The foregoing statement made and published by the Defendants had, and continues to have, a defamatory and fallacious effect because it has impugned the professional reputation and standing of Sulner and has had an adverse effect upon his business interests and reputation as a forensic document examiner.

194. Sulner is entitled to recover from the Defendants such damages as will compensate him for the damage to his reputation and standing in the community and his profession, his mental anguish and suffering, and his humiliation and embarrassment.

195. Sulner is also entitled to an award of punitive damages because the Defendants acted in a malicious, wanton, reckless, willful and oppressive manner warranting an award of punitive damages.

FOURTH CAUSE OF ACTION

Sulner against Defendants re Vastrick Article

[False Advertising: Violation of Lanham Act, 15 U.S.C. § 1125(a)(1)]]

196. Sulner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

197. The Vastrick Article made a false statement targeting Sulner specifically by unambiguously stating or implying that a forensic document examiner is not a "true" professional and is "unqualified," "underqualified," or "lesser qualified" by virtue being a

"Member of the American Academy of Forensic Sciences but not Questioned Document Section."

198. The foregoing false and misleading representation of fact actually deceives, or has the tendency to deceive, a substantial segment of Sulner's existing and potential customers. This deception is material in that it concerns the inherent quality of Sulner's professional expertise and is likely to influence the purchasing decisions of potential customers seeking to hire a forensic document examiner by causing them to refrain from hiring Sulner.

199. The Defendants, jointly and severally, caused this false and misleading representation of fact to be published with knowledge of its falsity and/or with reckless disregard for the truth.

200. This false and misleading representation of fact violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1), and injures both Sulner and consumers.

201. This false and misleading representation of fact made and published by the Defendants has impugned the professional reputation and standing of Sulner and has had, and continues to have, an adverse effect upon his business interests and reputation as a forensic document examiner.

202. Sulner is entitled to recover from the Defendants such damages as will compensate him for the damage to his reputation and standing in the community and his profession, his mental anguish and suffering, and his humiliation and embarrassment.

203. Sulner is also entitled to an award of punitive damages because the Defendants acted in a malicious, wanton, reckless, willful and oppressive manner warranting an award of punitive damages.

204. Sulner seeks damages and injunctive relief, as well as a determination that the conduct of the Defendants constitutes deliberate, willful and/or bad faith conduct such that this case should be declared an exceptional case under 15 U.S.C. § 1117(a).

205. Sulner is entitled to an award of statutory damages and penalties, including attorneys' fees and the costs of this action, pursuant to 15 U.S.C. § 1117(a).

STATE CAUSES OF ACTION

Plaintiffs against Defendants re Vastrick Article under
Deceptive Business Practices Act of the Plaintiff's Various States

206. As alleged in detail hereinabove, the deceptive statements and material misrepresentations contained in the Vastrick Article and other promotional print and online materials disseminated by the Defendants have knowingly caused or are reasonably expected to cause confusion or misunderstanding as to the merits and legitimacy of certification by the BFDE.

207. The article deceptively implies that services provided by BFDE Diplomates are below the quality or standard of services in the applicable scientific community, and presents disparaging and misleading comments as if they are verifiable facts or accurate representations upon which the reader may reasonably rely. These deceptive and misleading statements are actionable within the meaning of the Consumer Protection Act and/or Deceptive Business Practices Acts of the Plaintiff's various states as outlined below:

Plaintiff	**State of Domicile**	**Violation of State Law**
Fisher	California	Cal. Bus. & Prof. Code § 17200 *et al*; Cal Bus. & Prof. Code § 17500 *et al.*
Hartwick	Missouri	No violation alleged under Missouri law
Sulner	New York	NY Gen. Bus. Law§ 349, § 350
Weldon	Texas	No violation alleged under Texas law
Will	North Carolina	North Carolina Gen. Stat. § 75-1.1
Willard	Ohio	Ohio Rev. Code § 4165.02
Williams	Illinois	815 ILCS 510/2; 815 ILCS 505/2

FIFTH CAUSE OF ACTION
Fisher Against Vastrick, ABA and ABFDE

208. Fisher repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

209. The Vastrick Article violated the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq*, and California False Advertising Law, Cal Bus. & Prof. Code § 17500 *et seq*. As alleged in detail hereinabove, the deceptive statements and material misrepresentations contained in the Vastrick Article and other promotional print and online materials disseminated by the Defendants within the State of California constitute deceptive trade or business practices, and the contents therein have knowingly caused or are reasonably expected to cause confusion or misunderstanding as to Fisher's qualifications, credentials, or expertise in the field of document examination. The article is laden with disparaging and misleading statements as if they are verifiable facts or accurate representations upon which the reader may reasonably rely.

210. Pursuant to the California Business and Profession Code Unfair Competition Law and the False Advertising Law, Fisher is entitled to, and does make claim for, actual damages, incidental and consequential damages, punitive or treble damages, and attorney's fees and costs.

SIXTH CAUSE OF ACTION
Sulner Against Vastrick, ABA and ABFDE

211. Sulner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

212. The Vastrick Article violated the New York Consumer Protection from Deceptive Trade and Practices Act, N.Y. Gen. Bus, Law § 349 *et seq*. As alleged in detail

hereinabove, the deceptive statements and material misrepresentations contained in the Vastrick Article and other promotional print and online materials disseminated by the Defendants within the State of New York constitute deceptive trade or business practices, and the contents therein have knowingly caused or are reasonably expected to cause confusion or misunderstanding as to Sulner's qualifications, credentials, or expertise in the field of document examination. The article is laden with disparaging and misleading statements as if they are verifiable facts or accurate representations upon which the reader may reasonably rely.

213. Pursuant to the New York Consumer Protection from Deceptive Trade and Practices Act, Sulner is entitled to, and does make claim for, actual damages, incidental and consequential damages, punitive or treble damages, and attorney's fees and costs.

SEVENTH CAUSE OF ACTION
Will Against Vastrick, ABA and ABFDE

214. Will repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

215. The Vastrick Article violated North Carolina General Statute Section 75-1.1 Chapter 75 of the North Carolina General Statutes is titled Monopolies, Trusts and Consumer Protection. As alleged in detail hereinabove, the deceptive statements and material misrepresentations contained in the Vastrick Article and other promotional print and online materials disseminated by the Defendants within the State of North Carolina constitute deceptive trade or business practices, and the contents therein have knowingly caused or are reasonably expected to cause confusion or misunderstanding as to Will's qualifications, credentials, or expertise in the field of document examination. The article is laden with disparaging and misleading statements as if they are verifiable facts or accurate representations upon which the reader may reasonably rely.

216. Pursuant to North Carolina General Statute Section 75-1 *et seq*, Will is entitled to, and does make claim for, actual damages, incidental and consequential damages, punitive or treble damages, and attorney's fees and costs.

EIGHTH CAUSE OF ACTION
Willard Against Vastrick, ABA and ABFDE

217. Willard repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

218. The Vastrick Article violated Chapter 4165 of the Ohio Revised Code, Deceptive Trade Practices, Ohio Rev. Code § 4165.01 *et seq*. As alleged in detail hereinabove, the deceptive statements and material misrepresentations contained in the Vastrick Article and other promotional print and online materials disseminated by the Defendants within the State of Ohio constitute deceptive trade or business practices, and the contents therein have knowingly caused or are reasonably expected to cause confusion or misunderstanding as to Willard's qualifications, credentials, or expertise in the field of document examination. The article is laden with disparaging and misleading statements as if they are verifiable facts or accurate representations upon which the reader may reasonably rely.

219. Pursuant to the Chapter 4165 of the Ohio Revised Code, Willard is entitled to, and does make claim for, actual damages, incidental and consequential damages, punitive or treble damages, and attorney's fees and costs.

NINTH CAUSE OF ACTION
Williams Against Vastrick, ABA and ABFDE

220. Williams repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

221. The Vastrick Article violated the Illinois Deceptive Trade Practices Act 815

ILCS 510/1 *et seq*, and the Illinois Consumer Fraud Act, 815 ILCS 505/1 *et seq*. As alleged in detail hereinabove, the deceptive statements and material misrepresentations contained in the Vastrick Article and other promotional print and online materials disseminated by the Defendants within the State of Illinois constitute deceptive trade or business practices, and the contents therein have knowingly caused or are reasonably expected to cause confusion or misunderstanding as to Williams' qualifications, credentials, or expertise in the field of document examination. The article is laden with disparaging and misleading statements as if they are verifiable facts or accurate representations upon which the reader may reasonably rely.

222. Pursuant to the Illinois Deceptive Trade Practices Act, and the Illinois Consumer Fraud Act, Williams is entitled to, and does make claim for, actual damages, incidental and consequential damages, punitive or treble damages, and attorney's fees and costs.

TENTH CAUSE OF ACTION
Civil Conspiracy to Defame the BFDE
All Plaintiffs against all Defendants

223. All Defendants had actual knowledge that the statements in the Vastrick Article were false and misleading.

224. Sulner's emails informing Domitrovich and the ABA of the inaccuracies in the Vastrick Article, the BFDE rebuttal articles sent to the ABA, and the ASTM E-2388 training guide all directed the Defendants towards the blatant inaccuracies in the Vastrick Article.

225. Domitrovich, an editor responsible for ensuring the accuracy of the Vastrick Article, also served on the ARC that recommended that the FSAB Board deny the BFDE's reaccreditation application. Predicting that the BFDE would be a non-accredited board following the submission of the ARC's written recommendation, and having informed the

ABA of the written recommendation, Vastrick, Domitrovich and the ABA purposely chose to ignore the BFDE's persistent complaints and published the Vastrick Article.

226. At some time after June 8, 2015 and before the publication of the hard-copy of the Vastrick Article, the ABA, Domitrovich, and Vastrick all struck an agreement, likely when Sulner was engaged in tense communications with the editorial staff of the ABA, to publish the Vastrick Article as is, without regard to the truth of the matter contained therein, because they believed any complaints were being voiced by a soon to be de-accredited board.

227. Even though they knew that BFDE was a certified board, their belief that the revocation of the BFDE's FSAB accreditation was forthcoming, led them to publish the Vastrick Article without regard to the reputational and financial harm the article would cause to the plaintiffs,

228. Vastrick, Domitrovich, and the ABA conspired to defame the Plaintiffs.

VII. DEMANDS FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment as follows:

1. On the First Cause of Action, a judgment awarding Plaintiffs compensatory damages of not less than $100,000 per Plaintiff, and punitive damages in such amount(s) as may be found by the jury and deemed appropriate by the Court;

2. On the Second Cause of Action, a judgment awarding all Plaintiffs compensatory damages of not less than $100,000 per Plaintiff; and punitive damages in such amount(s) as may be found by the jury and deemed appropriate by the Court; an award of injunctive relief, pursuant to 15 U.S.C. § 1116(a); and an award of statutory damages and penalties, including reasonable attorney's fees and the costs of this action, pursuant to 15 U.S.C. § 1117(a);

3. On the Third Cause of Action, a judgment awarding Plaintiff Sulner compensatory damages of not less than $100,000, and punitive damages in such amount(s) as may be found by the jury and deemed appropriate by the Court;

4. On the Fourth Cause of Action, a judgment awarding Plaintiff Sulner compensatory damages of not less than $100,000; and punitive damages in such amount(s) as may be found by the jury and deemed appropriate by the Court; an award of injunctive relief, pursuant to 15 U.S.C. § 1116(a); and an award of statutory damages and penalties, including reasonable attorney's fees and the costs of this action, pursuant to 15 U.S.C. § 1117(a);

5. On the Fifth through Ninth Cause of Action, a judgment awarding the named Plaintiff compensatory damages of not less than $100,000 per Plaintiff; and punitive or treble damages in such amount(s) as may be found by the jury and deemed appropriate by the Court; and an award of statutory damages and penalties, including reasonable attorney's fees and the costs of this action;

6. On the Tenth Cause of Action, a judgment finding the Defendants *jointly and severally liable* for any and all judgments entered against any Defendant with respect to any Cause of Action alleged in this Complaint;

7. Plaintiffs seek injunctive relief requiring the Defendants to cease and desist from engaging in the unlawful, unfair, and/or deceptive practices alleged in this Complaint;

8. Plaintiffs seek injunctive relief to remedy Defendants' past conduct;

9. Plaintiff seek an Order directing the Defendants to pay any and all fees associated with corrective publications necessary to effectuate the Judgment of the Court, as well as an Order

directing the Defendants to report all corrective actions taken within thirty (30) days of entry of the Judgment in this cause;

10. Plaintiffs respectfully reserve the right to request leave of the Court to amend their Complaint, should unknown future Defendants become known through the discovery process; and

11. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all counts so triable.

Dated: April 28, 2017

BOARD OF FORENSIC DOCUMENT EXAMINERS, INC. (BFDE), and the following individuals who are certified by the BFDE: M. PATRICIA FISHER, LYNDA HARTWICK, ANDREW SULNER, J. MICHAEL WELDON, EMILY J. WILL, VICKIE L. WILLARD, and ROBIN D. WILLIAMS, Plaintiffs

By: /s/ Devvrat Sinha
One of their attorneys

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EXHIBITS TO COMPLAINT

Exhibit A	ASTM E-2388 training guide
Exhibit B	Sulner's Curriculum Vitae
Exhibit C	*Cognitive Bias: Handwriting* (Sulner 2014), published in the *Wiley Encyclopedia*
Exhibit D	June 8, 2015 e-mail from the ARC to BFDE representative Vickie Willard listing Domitrovich as a member of the ARC
Exhibit E	Selected (pertinent) pages from the ***pre-publication*** PDF copy of *The Judges' Journal* Comforty sent to Sulner
Exhibit F	Three demand letters sent in August 2015 by Sulner/BFDE (2) to the ABA
Exhibit G	ABA General Counsel Sanborn's September 11, 2015 letter
Exhibit H	BFDE's October 12, 2015 transmittal letter and the attached rebuttal article ("BFDE Rebuttal Article Ver. 1")
Exhibit I	Sanborn's letter dated November 4, 2015
Exhibit J	Sulner's/BFDE's reply letter dated November 5, 2015
Exhibit K	BFDE Rebuttal Article 2
Exhibit L	Sulner's February 3, 2016 letter to Comforty
Exhibit M	Online version of Vastrick Article posted to ABA website on February 18, 2016
Exhibit N	Vastrick's CV – published online and printed on April 27, 2017
Exhibit O	"Certification" Webpage stating "Don't be fooled" written by Vastrick